THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 31st day of January,2007

W.P.No.9720 of 1997

Between:-

Y.V. Sastry ...
Petitioner

and

The Zonal Manager, Food
Corporation of India, Zonal Office-2,
Haddows Road, Maderas-600 006,
and others ...
Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.9720 of 1997

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the 1st respondent in reverting the petitioner to the post of Assistant Grade III(D) from the post of Assistant Grade II(D) and cancelling the Order of promotion issued on 26-11-1990 as arbitrary and illegal and consequently to refrain the respondents from giving effect to the Office Order No.075/97/Estt.I, dated 11-4-1997 and continue the petitioner as Assistant Grade-II(D) .

It appears, the petitioner was initially appointed in Class IV service of the respondent-Corporation at Bhopal (Central Zone) with effect from 17-4-1972. Thereafter, he was transferred to Southern Zone i.e. Andhra Pradesh region by an Order dated 18-10-1973 of the Regional Manager, Madhya Pradesh Region, Food Corporation of India and he joined as such at Visakhapatnam on 30-10-1973. Subsequently, he was also promoted to the post of Assistant Grade III(D) with effect from 4-12-1975 and his services in the said cadre were regularized on 29-12-1981 with effect from 4-12-1975 – the day when he was promoted. Further, he was also promoted to the post of Assistant Grade II(D) with effect from 26-11-1990. However, for the reasons best known to the respondents, he was reverted from the post of Assistant Grade II(D) to the post of Assistant Grade III(D) without assigning any reasons and without giving him any opportunity. Therefore, the

present Writ Petition.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. It is asserted that the Order dated 11-4-1997 is not an Order of reversion as stated by the petitioner. The said Order is passed merely consequential upon the refixation of the seniority of the petitioner based upon his date of transfer and joining duty in the Southern Zone in 1973. The Office Order dated 4-12-1975 promoting the petitioner to Assistant Grade III(D) was on *ad hoc* basis and pending determination of his due seniority and so also the regularization with effect from 29-12-1981. Petitioner is not entitled to equate himself with one G.Chinniah. The facts and circumstances concerning the said person are different. He has been an employee in the southern zone from inception, whereas the petitioner came into the southern zone on request transfer from Madhya Pradesh, vide Office Order dated 26-10-1973. Petitioner, in fact, did not have requisite period of service for regular promotion to the post of Assistant Grade III(D) in 1975. *Ad hoc* promotion was given to the petitioner to the post of Assistant Grade III(D) on an erroneous basis of his service having been reckoned from the date of his appointment in Bhopal in the year 1972; whereas, the correct position for the purpose of calculating the minimum service required is from the date of his joining in the Southern Zone in the year 1973. Thus, the petitioner's seniority was reviewed and the impugned Order was passed. Petitioner has not made out any case calling for interference of this Court under Article

226 of the Constitution of India.

While admitting the Writ Petition, this Court by an interim Order dated 11-5-1997 suspended the impugned Order dated 11-4-1997 and the said order is continuing even as on today. Thus, the petitioner is continuing in the post of Assistant Grade II(D) as of now. Now, it is about ten years since the interim order was passed by this Court.

Be that as it may, though several reasons were furnished in the counter affidavit, absolutely no notice of any kind was issued to the petitioner before passing the impugned Order. Therefore, the impugned Order is in gross violation of principles of natural justice. On this ground alone, the impugned Order is liable to be set aside and is accordingly, set aside.

The Writ Petition is, therefore, allowed. No order as to costs.

31-1-2007

prk